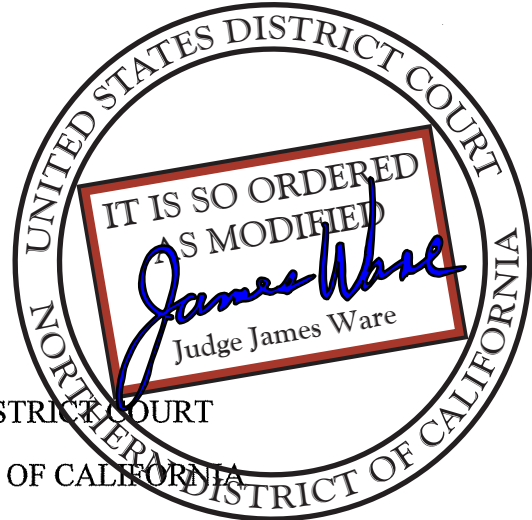


SEAN P. NALTY (SBN 121253)
**WILSON, ELSE, MOSKOWITZ,
EDELMA & DICKER LLP**
525 Market Street, 17th Floor
San Francisco, California 94105
Telephone: (415) 433-0990
Facsimile: (415) 434-1370

Attorneys for Defendants
BERKSHIRE LIFE INSURANCE COMPANY
OF AMERICA and THE GUARDIAN LIFE
INSURANCE COMPANY OF AMERICA



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE BRANCH

DR. JOEL DREXEL,
Plaintiff,

vs.

BERKSHIRE LIFE INSURANCE
COMPANY OF AMERICA; THE
GUARDIAN LIFE INSURANCE
COMPANY OF AMERICA, DOES I
THROUGH V, INCLUSIVE, AND ROE
CORPORATIONS I THROUGH V,
INCLUSIVE,

Defendants.

Case No.: CV08-03653 JW

**STIPULATION OF THE PARTIES RE:
PROPOSED AMENDMENT TO
SCHEDULING ORDER; PROPOSED
ORDER**

Action Filed: June 19, 2008

Plaintiff Joel Drexel, through his counsel of record Charles Perkins, and defendants Berkshire Life Insurance Company of America and The Guardian Life Insurance Company of America, through their counsel of record Sean P. Nalty, hereby submit to the Court the following stipulation in which the parties respectfully request that the Court modify its scheduling order in this matter for the reasons discussed below.

1. Mr. Perkins recently became counsel of record for Dr. Drexel. Once Mr. Perkins reviewed the extensive claim file and discovery already performed in this matter, the parties

1 agreed that private mediation would be appropriate in this matter. Plaintiff's prior counsel did not
2 want to participant in private mediation. Once the parties made the decision to pursue private
3 mediation, counsel contacted Magistrate Judge Edward A. Infante (Ret.) to conduct the
4 mediation. Judge Infante's first available date, which also worked for the parties, was July 23,
5 2009. The parties have scheduled the mediation with Judge Infante on July 23, 2009. Judge
6 Infante has worked with Mr. Perkins and Mr. Nalty in the past and it is the consensus of counsel
7 that he gives the parties the best opportunity to resolve this matter.

8 3. Because Judge Infante gives the parties the best opportunity to resolve this matter,
9 the parties respectfully request that the deadline for mediation in this matter, currently set for July
10 6, 2009, be extended to July 24, 2009. The parties further request that this matter be removed
11 from the court's mediation program and referred to Judge Infante for private mediation.

12 4. Between now and the mediation, the parties will conduct the investigation and
13 discovery necessary to have a productive mediation. However, the parties do not wish to
14 complete all of the necessary discovery prior to the mediation in order to reduce attorney's fees
15 and costs. This will facilitate possible resolution of this matter.

16 5. Because of this, the parties respectfully request the Court move the discovery
17 cutoff date in this matter to give the parties more time to complete discovery in event that
18 mediation is unsuccessful. Currently, the discovery cutoff date is September 14, 2009. The
19 parties respectfully request that the Court move the discovery cutoff date in this matter to at least
20 October 5, 2009 and that the deadlines associated with the discovery cutoff deadline be similarly
21 extended. The parties believe that additional time to prosecute this matter, so that expenses can
22 be kept down between now and the mediation date, is the best way to handle this matter going
23 forward.

24 \\\

25 \\\

26 \\\

27 \\\

Therefore, based on the above, the parties hereby stipulate and request that the Court move the discovery cutoff in this matter to October 5, 2009 and that the deadlines associated with the discovery cutoff deadline be similarly extended.

Dated: May 22, 2009 WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP

By: /s/ Sean P. Nalty
SEAN P. NALTY
Attorneys for Defendants
BERKSHIRE LIFE INSURANCE COMPANY OF
AMERICA and THE GUARDIAN LIFE INSURANCE
COMPANY OF AMERICA

Dated: May 22, 2009 FLYNN, ROSE & PERKINS

By: /s/ Charles B. Perkins
CHARLES B. PERKINS
Attorneys for Plaintiff
Dr. Joel Drexel


PROPOSED ORDER

Based on the stipulation stated above, and good cause therefore, the Court hereby refers this matter to private mediation with Judge Infante and amends the scheduling order in this matter as follows:

Mediation Deadline: July 24, 2009. This case shall be removed from the Court's ADR program.

Discovery Cutoff: October 5, 2009.

However, all other deadlines in the Court's April 28, 2009 Scheduling Order shall remain unchanged. (See Docket Item No. 24.)


HON. JAMES WARE, DISTRICT
COURT JUDGE